IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST

Not Restricted

S ECI 2020 04794

JULIAN TAYLOR — Appellant

v

VICTORIAN INSTITUTE OF TEACHING — Respondent

JUDGE:	Ginnane J
WHERE HELD:	Melbourne
DATE OF HEARING:	28 September 2021
DATE OF JUDGMENT:	14 April 2022
CASE MAY BE CITED AS:	Taylor v Victorian Institute of Teaching (No 2 – The VCAT Appeal Proceeding)
MEDIUM NEUTRAL CITATION:	[2022] VSC 185

ADMINISTRATIVE LAW – Victorian Civil and Administrative Tribunal – Review of decision to cancel registration of teacher – Application significantly out of time – VCAT refusing extension of time – Application for leave to appeal VCAT's order – Application dismissed – *Victorian Civil and Administrative Tribunal Act 1998* ss 126, 148.

APPEARANCES:	Counsel	Solicitors
For the Appellant	In person	
For the Respondent	M Isobel	Solicitor for the Victorian Institute of Teaching

HIS HONOUR:

1 Mr Julian Taylor seeks leave to appeal from orders of the Victorian Civil and Administrative Tribunal ('VCAT' or the 'Tribunal') dated 3 December 2020.[1] Those orders refused his application for an extension of time to commence a proceeding to review a decision of the Victorian Institute of Teaching made on 31 August 2015 and struck out his application.[2] I will refer to the Victorian Institute of Teaching as 'VIT' or 'the Institute'.

2 On 31 August 2015 the VIT made the following finding and determination:[3]

> Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 August 2015 the Panel found that Mr Taylor had obtained his registration by misrepresentation.
>
> The Panel determined to cancel Mr Taylor's registration from 31 August 2015.

3 Mr Taylor was provisionally registered as a teacher on 25 January 2006 and was granted full registration on 12 January 2012.

4 In June 2015, the VIT was notified of concerns about the identity of a teacher registered in Victoria, Mr Julian Taylor. The VIT investigated to determine if Mr Taylor had obtained his registration by fraud or misrepresentation. The matter was referred to a formal hearing before a hearing panel under Part 2.6 Division 12 Subdivision 4 of the *Education and Training Reform Act 2006* ('the ETR Act'). Under s 2.6.46(2), if after considering the submissions made at a formal hearing, the Panel finds that the registration of the teacher has been obtained by fraud or misrepresentation or concealment of facts, the Panel has a range of options. It may impose conditions, limitations or restrictions on the teacher's registration, caution or reprimand the teacher, refer the matter to a medical panel, suspend the teacher's registration, cancel the teacher's registration and, in the latter event, disqualify the teacher from applying for registration for a specified period. The hearing panel is

1 *Taylor v Victorian Institute of Teaching (Review and Regulation)* [2020] VCAT 1359 (3 December 2020) [81]-[84] ('VCAT Decision').

2 Section 2.6.55 of the *Education and Training Reform Act 2006* conferred on VCAT jurisdiction to conduct the review.

3 A copy of the VIT's 'Decision and Reasons of the Formal Hearing' is in Exhibit N1 of the Affidavit of Julian Taylor affirmed on 16 March 2021.

bound by the rules of natural justice.[4]

5 A notice of formal hearing dated 23 July 2015 was sent to Mr Taylor by express post on 30 July 2015. The allegations against him were that:

> 1. Between about 1 November 2005 and 30 June 2006, at Melbourne, Victoria and elsewhere, Julian Richard TAYLOR [name as registered] also known as Julian Steven TAYLOR fraudulently and by false representation obtained registration to teach, by:
>
> a. completing your 2005 application in a false name;
>
> b. failing to disclose your previous names;
>
> c. failing to disclose your findings of guilt and convictions for indictable offences in Victoria and elsewhere; and
>
> d. providing a false identity document in support of your application; and
>
> 2. Between about 1 July 2007 and 23 July 2015, at Melbourne, Victoria and elsewhere, Julian Richard TAYLOR [name as registered] also known as Julian Steven TAYLOR fraudulently and by false representation obtained registration to teach by:
>
> a. Completing your applications in a false name;
>
> b. Failing to disclose your previous names;
>
> c. Failing to disclose your findings of guilt and convictions for indictable offences in Victoria and elsewhere; and
>
> d. Providing a false identity document in support of your applications.

6 The Tribunal's description of the Panel's findings included:[5]

> The decision to cancel Mr Taylor's teaching registration followed the panel's finding that Mr Taylor obtained his registration by misrepresentation. The panel stated that:
>
> The evidence is compelling that the person known to the [VIT] as Julian Richard Taylor did:
>
> - Complete an application in a false name;
>
> - Failed to disclose his previous names;
>
> - Failed to disclose his findings of guilt and conviction for offences, including indictable, in Victoria and elsewhere; and

4 ETR Act s 2.6.48(d).
5 VCAT Decision, [2]-[4].

- Provided a false identity document in support of his application(s).

> The evidence … is unambiguous in that the Birth Certificate provided by Mr Taylor to support his registration application is false.

The birth certificate referred to is a Tasmanian Record of Birth, purported to be issued on 20 December 1993 in respect of the birth of Julian Richard Taylor in Hobart, Tasmania on 16 January 1965. However, there was no record held in the Tasmanian Register of Births of Mr Taylor, and the registration number used on the birth certificate he provided corresponded with a female born on 7 May 1965. In fact, based on records of the Department of Foreign Affairs, Mr Taylor was born in Bridgwater, England on 16 January 1965 and his name at birth was Steven Robert Barr.

As Mr Taylor produced a false birth certificate and did not disclose any of his previous names, at the time the VIT first registered him as a teacher, the organisation was unaware that he had been convicted of a number of offences, including offences involving dishonesty.

7 The Institute's Panel found:

FINDINGS

In reaching its determination the Panel is mindful that the purpose of the determination is not to punish Mr Taylor. Rather the purpose of the determination is to protect the public, by preventing persons who are not suitable, or whose suitability has not been able to be properly assessed, from practising as teachers, and by maintaining proper professional standards.

In *Board of Professional Engineers of Queensland v Shirtcliffe* [2014] QSC 179 Boddice J citing a passage from the English and Wales Court of Appeal decision of *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 at 712-713 observed:

> *"A person who obtains an advantage by fraud will not be allowed to keep that advantage. Fraud unravels everything. It vitiates judgements, contracts and all transactions whatsoever."*

In this context the Panel found that what must be 'unravelled' is the initial registration of the person known as Julian Richard Taylor on 25 January 2005, 21 January 2008 and 12 January 2012. In respect of each application the registration of Julian Richard Taylor was established by misrepresentation. The birth certificate document provided and representations made in support of the registration as well as the declarations attesting to the truth of the material particulars in support of the registration were false. The consequence of that misrepresentation was to prevent the Institute from exercising its statutory powers and did not allow the Institute to assess Julian Richard Taylor's suitability to teach.

In making its determination the Panel is mindful of its obligations to protect the public and to maintain public confidence in the teaching profession. Every opportunity was extended to Mr Taylor to participate in the hearing process but he chose not to do so. Mr Taylor provided no explanation for his behaviour and provided no evidence to dispute the evidence of the Institute's witnesses.

> The Panel acknowledges that his decision not to attend made it impossible for the Panel to test and examine any evidence related to his insight, remorse or possible remedial action. Nevertheless the Panel finds that Mr Taylor's pattern of behaviour was of a continuing and persistent nature and throws considerable doubt on how he would conduct himself in the future.
>
> Although the Panel have not had the opportunity of hearing from Mr Taylor, the Panel are unable to find a benign explanation for the misrepresentations. The Panel therefore consider it to be a reasonable inference that Mr Taylor possesses serious character flaws suggesting that he should not be placed in a position of authority or trust.
>
> Furthermore such actions have the potential to bring the profession itself in disrepute because they clearly transgress the ethical and professional behaviour expected of a teacher as codified in the Victorian Teaching Profession Codes of Ethics and Conduct.
>
> Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 August 2015 the Panel found that Mr Taylor had obtained his registration by misrepresentation.

The Tribunal's decision

8 The Tribunal made the following findings:[6]

> For the reasons which follow, we find that:
>
> (a) the application for review was made after the time allowed for in the *Education and Training Reform Act 2006* (Vic) (**ETR Act**); and
>
> (b) an extension of time should not be granted under section 126 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**).
>
> It follows that the application for review of the Decision must be struck out.

9 In respect of the length of Mr Taylor's delay in commencing his application, VCAT found that Mr Taylor had been given a copy of the decision by no later than 26 October 2015. He filed his application for review with VCAT on 24 September 2019, approximately 42 months late. Therefore, VCAT under s 126 of the *Victorian Civil and Administrative Tribunal Act 1998* ('VCAT Act') had to consider whether to extend the time in which he could commence his application until 24 September 2019.

10 The Tribunal decided that time should not be extended. It found that Mr Taylor had not clearly demonstrated an acceptable explanation for the delay of three and a half years. It found that it would not be unfair or inequitable to refuse to extend time because Mr Taylor had other avenues to address his concerns about the decision,

[6] VCAT Decision, [5].

including by judicial review proceedings in this Court. It found that he had not made VIT aware that he contested the finality of its decision, although it gave that matter little weight. It was not convinced that there was any real prejudice to VIT in granting an extension of time, but did find that there was a real risk of unsettling other people who otherwise reasonably would believe that the matter was at an end. The Tribunal found that the strongest factor against the exercise of the discretion to extend the time was that Mr Taylor's application to review the VIT's decision lacked merit, meaning that it had little prospects of success. It found that he had not advanced any submissions, or provided any evidence, to suggest it was likely that the Tribunal would, on review, conclude that the preferable decision was not to cancel his registration.

11 Mr Taylor seeks leave to appeal the refusal to extend time to commence this proceeding on contentions, which were contained in what were described as eleven questions of law and 102 proposed grounds of appeal. He filed many affidavits. The questions of law were: that the Tribunal made numerous errors of fact and legal errors; failed to afford him natural justice and procedural fairness; failed to address and reverse numerous jurisdictional errors committed by the VIT; breached his human rights under Articles 6, 7, 8 and 10 of the *Universal Declaration of Human Rights*; displayed extreme bias and prejudice against him; ignored VIT's actions in wilfully and deliberately deceiving it with the intention of perverting the course of justice; acting under the ETR Act in a matter that occurred in 2005 and failing to review his registration under the *Victorian Institute of Teaching Act 2001*; did not take into account that at an officer of the Institute breached the *Privacy and Data Protection Act 2014* and the *Crimes Act 1958* and perverted the course of justice and ignored that the case was in the public interest to be reheard.

12 Most of these contentions and the many proposed grounds of appeal are misguided and do not require consideration, because they misunderstand VCAT's role. VCAT determines disputes and issues afresh in order to decide the correct or preferable decision. It does not determine the validity of the original decision. So arguing, for

instance, that the VIT breached the rules of natural justice is irrelevant to VCAT's determination of a proceeding because it makes its own decision afresh. Still less are such arguments relevant when VCAT is being asked to extend time to allow an application for an extension of time, a task which requires VCAT to exercise a discretion. VCAT explained its role in the following passage:[7]

> The problem with each of the 'errors of law', 'jurisdictional errors' and 'breaches of natural justice' identified by Mr Taylor is that they entirely misconceive the nature of review proceedings at VCAT. As observed by Emerton J in *The Sisters Wind Farm Pty Ltd v Moyne Shire Council*:
>
> > the Tribunal does not review the propriety or legality of the decision made by the initial decision-maker. Its task is to "stand in the shoes" of the original decision-maker and make the correct or preferable decision, having regard to the material before it. The review therefore takes place without any presumption as to the correctness of the decision under review.
>
> To similar effect, in Garde-Wilson, Bell J observed that:
>
> > an administrative decision which might be, or is, invalid for jurisdictional error will still attract the jurisdiction of a statutory review tribunal, for the tribunal's jurisdiction will usually depend on the fact that the decision was made, not on its validity.
>
> Any jurisdictional error, if proved, may form a basis to set aside the Decision on judicial review at common law, or under the *Administrative Law Act 1978* (Vic). It does not, however, demonstrate that a different decision is the correct or preferable decision.
>
> To establish the latter, Mr Taylor would need to provide evidence to support a contention that either:
>
> (a) He did not, in fact, mislead the VIT in his application to be registered as a teacher, such that there was no basis to cancel his registration as a teacher.
>
> (b) The cancellation of his registration is not the preferable decision, having regard to the usual considerations in a professional disciplinary context, including the need (or otherwise) for general and specific deterrence, his remorse and insight and his prospects of rehabilitation.

Mr Taylor's challenge to VCAT's exercise of discretion to refuse him an extension of time

13 In order for Mr Taylor to challenge successfully VCAT's exercise of its discretion contained in s 126 of the VCAT Act to refuse to extend time, he would have to establish that it made a recognised error in the exercise of its discretion giving rise to

7 VCAT Decision, [81]-[84].

a question of law within s 148 of the VCAT Act and justifying the grant of leave to appeal.[8]

14 The Tribunal dealt with Mr Taylor's argument that the VIT decision was void, because it was made under the wrong Act and whether, if so, this affected when time started to run in the following passage:[9]

> As noted above, Mr Taylor contends that the Decision was void, with the inference that time has never started to run. There appears to be two alternative bases on which Mr Taylor contends that the Decision was void.
>
> First, Mr Taylor contends that the Decision was made under the 'wrong legal test' in that the VIT panel reviewed his registration under the ETR Act (which was proclaimed on 1 July 2007) when it should have used the *Victorian Institute of Teaching Act 2001* (Vic) (**VIT Act**) which was in place at the time that he became a registered teacher.
>
> A similar issue arose in *Thomas v Victorian Building Authority* (***Thomas***). The respondent had issued a show cause notice to Mr Thomas applying the current form of the relevant legislation to acts or omissions which occurred during an earlier period of time when the regulatory regime differed. It was contended by Mr Thomas that the notice was invalid because the two grounds relied upon by the VBA, sections 179(1)(a)(i) and 179(1)(b) of the *Building Act 1993* (Vic), 'were not available grounds under the Act as at the period from 2004-2006 [ie. the earlier period when the relevant conduct occurred]'.
>
> In that case, Kennedy J held that:
>
> > the transitional provisions, when considered along with the current form of the Act, evince an express intention that the current provisions prevail. This does not mean that different standards will necessarily apply. Thus, as is demonstrated in this case, s 179(1)(a) (which provides that the practitioner 'has contravened' the Act) can, as is alleged in the notice, refer to the Act (which is the same Act) as it applied at the relevant time. However, I am satisfied that the specification of the grounds is to be matched to the current form of s 179 consistent with what occurred in the notice in this case.
>
> In the Decision, the panel found that Mr Taylor obtained his registration by misrepresentation for the purposes of section 2.6.46(2)(g) of the ETR Act. The transitional provisions in the ETR Act provide that a teacher that was registered under the VIT Act before the commencement of the ETR Act 'continues to be registered by the [VIT] under and subject to this Act' (ie. the ETR Act).
>
> Relevantly, section 20(4) of the VIT Act had also provided for cancellation of registration of a teacher who, after a hearing, was determined to have obtained his or her registration as a teacher by fraud or misrepresentation.

8 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332.
9 VCAT Decision, [18]-[29].

> As in *Thomas*, the transitional provisions in the ETR Act make clear that the current provisions prevail and, in any event, the grounds on which the Decision was made are consistent between the ETR Act and VIT Act. As such, we do not consider that the VIT panel made the Decision under the wrong legal test or that the Decision is void for that reason.
>
> The second basis relied on by Mr Taylor is his contention that the Decision 'does not exist' because the VIT confirmed in a directions hearing that there is no version of the Decision that is signed by the three panel members. Accordingly, he contends that '[s]ince it does not exist it is impossible for me to have received it' and the 'decision is void'.
>
> The Decision itself was made by a panel comprising Ms Marilyn Mooney (as chairperson), Ms Anne Farelly and Mr Rowland Richardson. At the end of the Decision, Ms Mooney signed for herself and 'per' Ms Farelly and Mr Richardson. This suggests that Ms Mooney signed on behalf, and with the authority, of each of Ms Farrelly and Mr Richardson. There is no evidence presented by Mr Taylor to suggest that Ms Mooney did not have the authority to do so.
>
> Section 2.6.46 of the ETR Act specifies that, after considering all submissions made to a formal hearing, a panel may make certain findings about a teacher and make determinations as to the action to be taken as a result, including cancellation of registration. Section 2.6.49A provides that the VIT may publish the whole or part of the findings, reasons or determinations of a panel in any manner that it thinks fit. Section 2.6.50 provides that the VIT must advise a teacher in writing of the determination of the panel and any cancellation of his or her registration. There is nothing in the ETR Act that provides that a decision of a hearing panel must be signed by each panel member to have effect.
>
> In those circumstances, there is no basis for Mr Taylor's argument that any failure by the VIT to have the Decision signed by each of the panel members rendered the Decision void.
>
> Even if we are wrong on either point, section 4(2) of the VCAT Act provides that for the purposes of both the VCAT Act and an enabling enactment (such as the ETR Act), a decision:
>
> (a) is made under an enactment if it is made in the exercise *or purported exercise* of a function conferred or imposed by or under that enactment; and
>
> (b) that purports to be made under an enactment is *deemed to be a decision* made under that enactment *even if the decision was beyond the power of the decision-maker*.

15 In my opinion, VCAT was correct in these conclusions for the reasons that it gave. The Panel made its decision under the correct Act, the current Act which prevailed, and so did VCAT. In addition, VCAT's review jurisdiction can be invoked in respect of an invalid or void decision as s 4(2) of the VCAT Act makes clear.

Has Mr Taylor otherwise established that VCAT's exercise of the discretion to refuse him an extension of time was invalid thereby giving rise to a question of law justifying the grant of leave to appeal?

16 VCAT applied the principles discussed in *Hunter Valley Developments Pty Ltd v Minister for Home Affairs and Environment*[10] to determine whether to grant an extension of time.

Adequacy of Mr Taylor's reasons for delay

17 The Tribunal first considered whether Mr Taylor had demonstrated an acceptable explanation for his delay. His explanation included that he was held on remand for two years and even when bailed had significant other responsibilities such as fighting deportation and fighting for access to his daughter. He said that he was under strict bail conditions and was concerned that he not breach them. He was also making Freedom of Information requests.

18 After a police investigation that followed the Panel's determination, Mr Taylor was arrested on 25 November 2015. He was granted bail on 13 September 2017.

19 On 14 August 2018, Mr Taylor was found guilty in the County Court of:

(a) Four charges of using a false document contrary to section 83A(4) of the *Crimes Act 1958*;

(b) One charge of perjury contrary to section 314(1) of the *Crimes Act 1958*;

(c) Seven charges of obtaining a financial advantage by deception contrary to section 82(1) of the *Crimes Act 1958*; and

(d) One charge of making, using or supplying identification information contrary to section 192B(1) of the *Crimes Act 1958*.

20 Mr Taylor was sentenced to two years and 11 months imprisonment with a non-parole period of two years and two months. His application in the Court of Appeal for leave to appeal the conviction and sentence was dismissed.[11]

[10] (1984) 3 FCR 344.
[11] *Taylor v The Queen* [2019] VSCA 162.

21 His visa was cancelled due to the conviction and sentence, and he has been in immigration detention since completing his sentence. He is a British citizen.

22 The Tribunal noted that the cover letters accompanying the VIT decision made plain that if Mr Taylor was dissatisfied with the reasons for its decision, he could request review by VCAT. He had three months in which to do so. It stated:[12]

> While it may be accepted that things became more difficult when he was placed on remand (although not impossible), there is no real explanation of why he did not take steps to apply for review once he was released on bail in September 2017. He had almost a year to do so before his trial and imprisonment.
>
> In that period, the bail condition restricting approaches to the VIT did not in fact prevent Mr Taylor commencing an application against the VIT by filing an application with VCAT.
>
> In those circumstances, Mr Taylor has not clearly demonstrated an acceptable explanation for the delay of three and half years.

23 In my opinion, Mr Taylor has not shown that the Tribunal erred in finding that he had not demonstrated adequate reasons for delay. The Tribunal's conclusion was open to it on the evidence.

The merits of Mr Taylor's substantive application

24 In considering whether it was fair and equitable to extend time, the Tribunal concluded that because Mr Taylor continued to have other avenues to address his concerns about the VIT decision and to achieve reregistration and because the application for review by the Tribunal lacked merit, it would not be unfair or inequitable to refuse to extend time.

25 So far as the merits of Mr Taylor's application were concerned, as previously stated, most of his questions of law or proposed grounds of appeal are not relevant to VCAT's review function. As the Tribunal stated, in the passage I have previously set out, the questions and proposed grounds misconceive the nature of review proceedings at VCAT. The Tribunal referred to a number of examples from Mr Taylor's grounds that justified this conclusion.

[12] VCAT Decision, [41]-[43].

26 The Tribunal considered the merits of Mr Taylor's proceeding in the following passages:[13]

> Mr Taylor has not sought to argue that the Tasmanian birth certificate was true and correct, and has not provided any explanation as to why he produced it, if not to cover up his history of criminal offending.
>
> In light of his conviction in the County Court, and the rejection of his appeal, it is hard to conceive how Mr Taylor could successfully contend that he did not mislead the VIT.
>
> In relation to the second consideration, it is noted that the Court of Appeal found that Mr Taylor 'displayed no remorse' and assessed his prospects of rehabilitation as being 'very poor'.
>
> The Court of Appeal concluded that 'a significant measure of specific deterrence' was required, not only for punishment but also in order to ensure the community is protected. (Of course, only the latter consideration is relevant in the context of disciplinary proceedings.)
>
> The Court of Appeal also indicated that there was a need for general deterrence given that Mr Taylor had frustrated the exercise of the VIT's statutory function, which has the capacity to diminish the community's confidence in the system of teacher regulation and the quality of the teaching profession generally.
>
> Mr Taylor has not advanced any submissions, or provided any evidence, to suggest it is likely that the Tribunal would, on review, conclude that the preferable decision was other than to cancel his registration.
>
> Indeed, Mr Taylor's very extensive submissions really only focus on two things:
>
> - alleged issues with the processes of the VIT panel; and
> - his grievances with the people involved.
>
> In relation to the former, they are (for the reasons already noted) matters that go to the legality of the decision (a matter for judicial review rather than merits review) and so are not particularly relevant to the issues at hand. Further, the reliance on these technicalities betrays a lack of insight on the part of Mr Taylor in relation to his own role in relation to the circumstances in which he finds himself.
>
> Mr Taylor compounded the initial acts of dishonesty (outside of teaching and the registration process) by making an application to the VIT using a false document in order to conceal the past dishonesty. He has never demonstrated candour by disclosing, or shown genuine insight and remorse about, that past offending.
>
> Mr Taylor is aggrieved by the actions of many parties, particularly Mr Williams, his ex-wife and the VIT panel. Those grievances involve him blaming others for the circumstances in which he finds himself. There is no

[13] VCAT Decision, [85]-[97].

> evidence of any self-reflection by Mr Taylor as to his own role or as to any remorse on his part.
>
> A teacher holds a trusted position in society. Parents trust teachers to not only competently teach their children particular subjects (such as mathematics in Mr Taylor's case), but also instil appropriate behaviour and conduct in their children. A teacher who starts their career dishonestly does not demonstrate that they deserve to be trusted in that way; rather, the teacher represents a risk to the community and to the standing of the teaching profession at large.
>
> Although Mr Taylor contends that he is an excellent teacher, and complains that the panel failed to consider his 'fitness to teach', this only focuses on one aspect of fitness to teach.
>
> In our view, the lack of merit in his application is the strongest factor standing against the exercise of the discretion to extend time.

27 In my opinion the Tribunal's reasoning and conclusion were open to it on the evidence and its exercise of discretion involved no error. Because it was deciding the case afresh the Tribunal was entitled to take into account Mr Taylor's criminal convictions and sentence in deciding that if an extension of time was granted, the Tribunal on review would not reach any other conclusion than that his registration as a teacher should be cancelled. It was irrelevant that he was seeking to have the Institute decision set aside and was not seeking reregistration. Indeed, if the Institute's determination was set aside, a question would have arisen whether that reinstated his registration. Also irrelevant was his contention that his conviction would not have occurred if he had not been deregistered. The Tribunal was not assessing his case as a criminal case rather than a civil case as he appears to contend. Nor was there any relevance in his proposition that no contract existed between the Institute and him. Nor was the fact that the Panel had not disqualified him for a specific period of time relevant to his VCAT proceeding.

28 Mr Taylor reargued a number of the grounds that he had relied on in the Tribunal. I have previously considered and rejected his contention that the decision was made under the wrong Act. Most of his other arguments were irrelevant because of the nature of the Tribunal's review function, but I will mention some examples. He made much of the fact that the Panel had made its decision to deregister him before criminal charges were determined and said that the reverse should have occurred. However, there is no rule or principle that a regulatory tribunal must await the

determination of any possible criminal proceedings before it exercises its functions. It is true that the Panel could have imposed a lesser penalty on Mr Taylor, such as suspension, but that was a matter for it.

29 Mr Taylor criticised the VCAT decision as treating him as if he had been found to have engaged in fraud as well as misrepresentation. But that is not so. In paragraph 2 of its decision the Tribunal stated that the Panel had found that Mr Taylor obtained his registration by misrepresentation. The Panel stated that:[14]

> The evidence is compelling that the person known to the [VIT] as Julian Richard Taylor did:
>
> - Complete an application in a false name;
> - Failed to disclose his previous name;
> - Failed to disclose his findings of guilt and convictions for offence, including indictable, in Victoria and elsewhere; and
> - Provided a false identity document in support of his application(s).
>
> The evidence… is unambiguous in that the Birth Certificate provided by Mr Taylor to support is registration application is false.

30 Mr Taylor argued that the Tribunal made errors of fact and law and denied him natural justice, including being biased against him and discriminating against them. None of the evidence before the Court justifies these allegations. He criticised the Tribunal for not rehearing the case in the public interest, but the Tribunal carried outs its statutory functions by deciding whether Mr Taylor should receive an extension of time. There is no evidence that the VIT deceived the Tribunal or that misconduct by any officer of VIT or breach of the *Privacy and Data Protection Act 2014* affected the Tribunal's decision.[15]

31 The VIT contended that Mr Taylor had not identified any questions of law, as required by s 148 of the VCAT Act. Therefore, the appeal had no prospect of success. Mr Taylor's grounds were either objections to factual conclusions by the Tribunal;

[14] VCAT Decision [2].

[15] Mr Taylor alleged that certain communications of his personal information by Mr Williams were in breach of the *Privacy and Data Protection Act 2014*. However, Information Privacy Principle 2.1(f) 'allows personal information to be used or disclosed for a purpose other than the primary purpose if such use or disclosure is required or authorised by or under law.'

bald assertions of law made without basis; or bald assertions of fact or conclusion. His application therefore failed at the first hurdle. The VIT submitted that even if Mr Taylor had identified any questions of law, they had no real prospects of success.

32 The VIT contended that there was no injustice in refusing Mr Taylor an extension of time. Given the criminal processes that occurred after the Panel's decision, it would have been fruitless for the Tribunal to give Mr Taylor an extension of time to review the Panel's decision. So it would be fruitless for this Court to allow leave to appeal. It would be not in the interests of justice to allow Mr Taylor's application. The Institute and its staff have been subjected to numerous applications by Mr Taylor made without foundation. In the event that Mr Taylor was granted leave to appeal, he would have no prospects of succeeding because he has not identified any legitimate questions of law. In addition, he was seeking to overturn a discretionary judgment by VCAT.

Other matters that the Tribunal considered in the exercise of its discretion

33 The Tribunal placed little weight on the VIT's submission that it was significant that Mr Taylor had not put it on notice that he planned to challenge the decision to cancel his registration. It was not convinced that there would be any real prejudice to the VIT in granting an extension of time.

34 But the Tribunal found that there was a real risk of 'unsettling other people' who otherwise reasonably believed the matter was at an end and that 'this was an important factor which militates against granting an extension of time'. It referred to Mr Taylor submitting numerous applications to VCAT's Human Rights List claiming discrimination by the VIT, including investigators and panel members as respondents, one of which had been dismissed as frivolous, misconceived or lacking in substance or was otherwise an abuse of process. It also noted that in his submissions for an extension of time, Mr Taylor had advanced accusations of conspiracy, incompetence, perjury and more by staff of the VIT, the police, the courts and others. The Tribunal's findings were open to it to make on the evidence before it.

Conclusion

35 In my opinion, Mr Taylor has not established that VCAT erred in the exercise of its discretion to refuse him an extension of time as alleged in his questions of law and associated grounds. None of those questions of law and associated questions have any real prospect of succeeding. There is no prospect that Mr Taylor would succeed in his VCAT proceeding if an extension of time were granted.

36 Mr Taylor's application for leave to appeal the decision of the Tribunal dated 3 December 2020 pursuant to s 148 of the VCAT Act is dismissed.

37 The VIT foreshadowed that in the event that the proceeding was dismissed, it would seek an order for its costs against Mr Taylor. Costs usually follow the event. I will give Mr Taylor the opportunity to respond to that application and the VIT the right to reply to any response that he makes.